

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JENNIFER ROUSSELL, ON BEHALF OF  
HERSELF AND OTHERS SIMILARLY  
SITUATED,

PLAINTIFF,

vs.

BRINKER INTERNATIONAL, INC.,

DEFENDANT.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION No. 4:05-CV-03733

Jury Requested

**DEFENDANT'S NOTICE OF APPEAL**

Defendant Brinker International Payroll Company, L.P. gives notice that it appeals to the United States Court of Appeals for the Fifth Circuit from the post-judgment Order and Final Rule 54(B) Judgment, entered in this action on August 4, 2010, and all orders and rulings rendered appealable thereby.<sup>1</sup>

---

<sup>1</sup> Plaintiffs sued Brinker International, Inc. on November 1, 2005. *See* Collective Action Complaint (Dkt 1). Prior to the entry of judgment, the parties stipulated to substitute Brinker International Payroll Company, L.P. as the defendant. The correct party defendant is "Brinker International Payroll Company, L.P.," as indicated on the aforementioned order. However, because there are various references in the record to "Brinker," "Brinker International," and "Brinker International Payroll Company, Inc.," among others, in an abundance of caution to preserve error, all variously named Brinker defendants join in this notice of appeal. Lastly, this is the third notice of appeal in this civil proceeding. The first (Dkt. 320) and second (Dkt. 381-1) were filed on August 19, 2009, and February 1, 2010, respectively. Per the May 11, 2010 Order from the United States Court of Appeals for the Fifth Circuit, one consolidated appeal of all merits and attorney's fees issues will be presented.

Dated: September 2, 2010

Respectfully submitted,

/s/ Fraser A. McAlpine

**Fraser A. McAlpine**

State Bar No. 13321300

Federal I.D. No. 3407

**HUNTON & WILLIAMS LLP**

Bank of America Center

700 Louisiana Street, Suite 4200

Houston, Texas 77002

Phone: 713.229.5700

Fax: 713.229.5750

ATTORNEY-IN-CHARGE FOR DEFENDANT  
BRINKER INTERNATIONAL, INC.

Of COUNSEL:

**Laura M. Franze**

State Bar No. 07389600

**Holly H. Williamson**

State Bar No. 21620100

**M. Brett Burns**

State Bar No. 03447900

**HUNTON & WILLIAMS, LLP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record via the Southern District of Texas' CM/ECF electronic filing system on September 2, 2010:

Martin A. Shellist, Esq. Daryl J. Sinkule, Esq. SHELLIST & LAZARZ LLP 1900 West Loop South Suite 1910 Houston, Texas 77027
Richard J. Burch BRUCKNER BURCH PLLC 1415 Louisiana #2125 Houston, TX 77002
David A. Borgen James Kan Laura L. Ho GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN 300 Lakeside Drive Suite 1000 Oakland, CA 94612

/s/ Fraser A. McAlpine

**Fraser A. McAlpine**